

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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TYLER ERDMAN, : Case No.: 20-cv-4162  
Plaintiff, :  
v. :  
ADAM VICTOR, et al., : New York, New York  
Defendants. : April 17, 2024  
-----:

TRANSCRIPT AND STATUS CONFERENCE HEARING  
BEFORE THE HONORABLE GABRIEL W. GORENSTEIN  
UNITED STATES MAGISTRATE JUDGE

APPEARANCES:

For Plaintiff: TYLER ERDMAN  
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1 THE COURT: We're here based on a number of  
2 disputes. We got a little bit of a late start due  
3 to some technical issues, but I think we're okay  
4 now.

5 The letters, I guess, amount to 238, 243,  
6 246, 247, 248, regarding the substance of the  
7 original dispute. Then there's two separate  
8 matters, one regarding conflict 249, 252, 256, and  
9 the other regarding a defendant request, 257, 258.  
10 Give me one second.

11 Okay. So let me just deal with the other  
12 two requests since I don't think it will take very  
13 long.

14 On the conflict issue -- 249, 252, 256 --  
15 this is not a situation where, even if plaintiff's  
16 allegations were true, the Court would have power to  
17 disqualify counsel in this case.

18 Disqualification occurs when there's  
19 concurrent representation of adverse parties in a  
20 single case. There's also potential for  
21 disqualification where there's successive  
22 representation of an adverse party, but such a  
23 motion has to be brought by the former client who  
24 wants the party to not represent the new client in  
25 the other case.

1           So Mr. Erdman doesn't have standing to do  
2           that. So that application is denied.

3           MR. ERDMAN: Your Honor, can I just address  
4           one part of that?

5           THE COURT: Sure.

6           MR. ERDMAN: I have a section in there that  
7           they didn't address about the effect on this case.  
8           It looks like they had trimmed out a section of the  
9           priv log during the limitations period, and they  
10          have yet to explain why that happened.

11          THE COURT: Okay. Well, that's a discovery  
12          issue. And that, you need to use my normal process  
13          for dealing with. I can only do one thing at a  
14          time.

15          On the defendants' request, I'm certainly  
16          concerned about delays in this case, obviously, but  
17          this request seems to not require any "search" as  
18          that term is normally understood by the plaintiff.  
19          It's asking, essentially, to identify things that  
20          are referenced in the complaint.

21          So, putting aside issues of timeliness,  
22          compliance with rules, Mr. Erdman, I assume this is  
23          stuff readily available to you.

24          MR. ERDMAN: Correct.

25          THE COURT: Okay. So, understanding your

1 legitimate concerns about the defendants' conduct,  
2 delays and everything else, I'm going to direct you  
3 to produce it within two weeks because it's  
4 basically zero burden to you.

5 All right. That brings us to the main  
6 event.

7 Mr. Erdman, let me give you the big picture  
8 here from my point of view. There is the need to  
9 get you to the discovery you're entitled to, and  
10 then there is the issue of whether defendants'  
11 attorney or the defendants' conduct is sanctionable.

12 Certainly, you've heard my many complaints  
13 about these attorneys and things they've done in the  
14 past. That's all on the record. Whether it is  
15 deserving of a sanction or not, you know, I'm not  
16 going to certainly deal with today, or perhaps even  
17 in the very near future.

18 One thing that does come up when there are  
19 problems is sometimes attorney's fees are the  
20 appropriate sanction. The problem is you can only  
21 award those to a licensed attorney. So I recognize  
22 the unfairness. I'm sure these problems have caused  
23 you a lot of unnecessary expenditure of time. But  
24 attorney's fees are not an option. Compensation to  
25 you for your time, under the case law, is also not

1 an option because it's essentially the equivalent of  
2 attorney's fees. So that's for another day.

3 My goal is to get you the documents you  
4 need. And to do that, you need information about  
5 what's out there and what has been done and all of  
6 that. So that is certainly a critical need on your  
7 part.

8 Once you have that -- it's been like  
9 pulling teeth to get that information from the  
10 defendants. Once you have that, then you can  
11 decide, well, what more needs to be done? Has it  
12 been done sufficiently? Has it been done (audio  
13 distortion) --

14 So my goal recently has been to think of  
15 every possible way to get you the information. And,  
16 you know, you're not a lawyer, and I'm certainly not  
17 blaming you, but your letters are not putting it  
18 together for me in any way I can understand. And it  
19 may be because you don't have the information. And  
20 maybe what's needed is for you to get more  
21 information.

22 And I think all that's left at this  
23 point -- and I don't know if you've done it -- is to  
24 depose Mr. Victor about the document production  
25 process. And to the extent he says, I don't know,

1 my attorneys know, potentially a deposition of an  
2 attorney about this process.

3 Have you deposed Mr. Victor?

4 MR. ERDMAN: I deposed him much earlier in  
5 the case, before they made their motion.

6 THE COURT: Okay. You are certainly  
7 welcome to depose him again about this process. And  
8 see if that gets you what you need, because it's  
9 all -- I mean, no one has put this together for me  
10 in any way that's comprehensible.

11 The way a document production works is  
12 first you decide what are the sources of documents.  
13 Now, in a corporation, we talk about custodians.  
14 That means, you know, people who have documents  
15 within a corporation. Here, we don't have a  
16 corporation, we have a single person.

17 So a single person, there's only one  
18 custodian that's within the power of -- well, we can  
19 talk about that, but from my point of view, there's  
20 only one person that we're now figuring out what  
21 their sources of documents are.

22 So step one is figuring out, like, what are  
23 their sources? Usually, the answer is, it's this  
24 laptop, it's that phone, it's, you know, this PC,  
25 you know, whatever it is. There are objects that

1 have -- it's this filing cabinet if it's not  
2 electronic. Those are what we call "sources."

3 And then the next step is, how are you  
4 going to search? What's the reasonable way to  
5 search those sources? If it's a filing cabinet, it  
6 may be enough to look under, you know, contracts.  
7 For example, if you're looking for contracts, that's  
8 what you're looking for. It may require looking  
9 through more folders, okay.

10 If it's electronically stored information,  
11 "ESI," as we call it, then you need some kind of  
12 program that's going to do the searching, which  
13 invariably uses search terms of some kind. So  
14 that's step two.

15 And then step three is, do you apply these  
16 search terms to the entire filing cabinet? Bad  
17 example.

18 Do you apply these search terms to the  
19 entire set of ESI, or, two, you limit it by dates.  
20 And going through that process, you come up with  
21 responsive documents.

22 There are nuances to this, which I don't  
23 know if I want to get into right now. But that's  
24 the start of it. And then somehow, whatever gets  
25 results from that has to, obviously, be put to you

1 in a form that you can look at.

2 So if you come to me and say, they haven't  
3 done what they're supposed to do, I need it, kind  
4 of, structured in that way. And if you don't know  
5 what they've done, I don't know that -- I'm not  
6 really prepared to have a little mini trial about  
7 that. I'd really rather you took depositions of the  
8 parties involved and present it to me what's there.

9 Now, if you think there are things that we  
10 can accomplish today based on what we have, I'm  
11 ready to have you try me. But I did read all these  
12 letters and there was just too much for me to be  
13 able to, sort of, make rulings, and too many  
14 unknowns in terms of how it fits into the structure  
15 that I just gave you.

16 So what's your ideas, Mr. Erdman?

17 MR. ERDMAN: I think one of the main issues  
18 is Mr. Rodriguez thinks that the Court had put a  
19 time limit that limits discovery past, I believe,  
20 June of 2019 onward to the filing of the amended  
21 complaint. And he now thinks he doesn't need to  
22 provide anything before that date.

23 THE COURT: Okay. So this is great. This  
24 is something I can deal with, what's the appropriate  
25 time period of the search?

1           So let me hear from defendant -- well, let  
2 me hear from you, what you think the appropriate  
3 time period is, and then I'll hear from the  
4 defendant.

5           MR. ERDMAN: Yeah. When we were initially  
6 serving document requests to each other, we spoke  
7 about this. I believe I requested until around  
8 2012, and he requested back to 2010. We both agreed  
9 it was a long time, but that would be the relevant  
10 time period.

11          THE COURT: 2012. Okay. Or 2010? I'm  
12 sorry, which?

13          MR. ERDMAN: He had gone for 2010. I  
14 believe I went for 2012.

15          THE COURT: Well, that seems ironic  
16 considering you would think he would want the later  
17 date.

18          MR. ERDMAN: Yeah.

19          THE COURT: Okay. By the way, who's "he"?

20          MR. ERDMAN: Sorry. Mr. Rodriguez.

21          THE COURT: And you have this in writing,  
22 or is this an oral conversation?

23          MR. ERDMAN: I believe it was a telephone  
24 call.

25          THE COURT: Okay. And then what is the

1 cutoff date, or was that not discussed?

2 MR. ERDMAN: You had ordered previously  
3 that they were to search everything to the present  
4 day for documents that relate to allegations in the  
5 complaint.

6 THE COURT: Present. And I did this when?

7 MR. ERDMAN: It was October 28 of '22.

8 THE COURT: Okay. I have an order from  
9 July 26th of '22 that says, "Produce all documents  
10 up to the present day." So I would think that in  
11 October I might have been referring back to that  
12 order; is that possible?

13 MR. ERDMAN: I was referencing Docket 170,  
14 page 14, slide 11.

15 THE COURT: Hold on. Hold on. Hold on.

16 Yeah, again, I'm referring to this July 26  
17 order. So I think July 26, 2022 is the date that I  
18 said it had to go up until.

19 Okay. So that's the dispute from your  
20 point of view, you think that's not their vision of  
21 the time period; is that right?

22 MR. ERDMAN: I don't think it's their  
23 vision. And just as you might have saw, their  
24 motion to compel, that was based on document  
25 requests they served in February. And they were

1 also asking for going back to 2010 at that point as  
2 well.

3 THE COURT: Hold on. Hold on.

4 Their document request --

5 MR. ERDMAN: The post-EBT requests. I  
6 believe they were an exhibit to their last letter.

7 THE COURT: Didn't seem to be time period  
8 dependent.

9 MR. ERDMAN: It's on line --

10 THE COURT: I mean, the substance of the  
11 request. Just tell us what you were referring to in  
12 your complaint. Is there some date in this request  
13 as well?

14 MR. ERDMAN: I'm referencing just the -- I  
15 believe the definition section of those post-EBT  
16 requests. And I've spoken to Mr. Rodriguez  
17 about how --

18 THE COURT: Okay. The time period is 2010  
19 through the present. Yeah. Okay.

20 So that's certainly evidence of your 2010  
21 period. I don't know that that binds them of saying  
22 they have to produce things to the present,  
23 considering it was irrelevant to the actual request  
24 that was being made in that document request. But  
25 certainly backs you up on the 2010 thing.

1           MR. ERDMAN: And the other issue I'm seeing  
2           is they have been claiming that they don't need to  
3           produce before that 2019 date, but it looks like  
4           they've gone the opposite way and they cut out  
5           everything in around 2019 onwards for a lot of  
6           stuff, or at least until 2022. And their excuses  
7           for that just don't make any sense. Like, they  
8           said, maybe there's nothing responsive after that  
9           date. They never say there isn't anything  
10          responsive. They just say vaguely or it's their  
11          position that there's nothing there. And it never  
12          sounds like they did a search for that period.

13          THE COURT: Okay. So let me hear from the  
14          defendants on the date issue.

15          MR. RODRIGUEZ: Well, Your Honor, you're  
16          exactly right. His characterization of the phone  
17          call is absolutely incorrect. I never would have  
18          gone back and maybe enlarge the time period. Quite  
19          the opposite.

20          During that phone call, I wished for a much  
21          more constrictive time period because I'm well  
22          aware of --

23          THE COURT: But when of do you think it  
24          should start at?

25          MR. RODRIGUEZ: It just start at -- it has

1 to start at June 1, 2019.

2 THE COURT: So why are you requesting  
3 documents from him from 2010?

4 MR. RODRIGUEZ: Because I'm requesting  
5 documents from 2010 because that has to do with our  
6 defense.

7 The only remaining remarks, according to  
8 the opinion order that partially granted our motion  
9 to dismiss, were five remarks in which, allegedly,  
10 our client referred to him as a felon or that he  
11 committed a felony, according to the Judge's opinion  
12 and order. And the five remaining remarks, they're  
13 all beyond the statute of limitations, so that's  
14 actually part of our defense.

15 THE COURT: Hold on. Hold on. Hold on.  
16 Hold on.

17 I read her opinion. I didn't see a listing  
18 of remarks. Where is that? Just tell me what page.

19 MR. RODRIGUEZ: I don't have the opinion  
20 order in front of me, but the only remaining remarks  
21 that survived the motion to dismiss were remarks in  
22 which my client referred to him as a felon.

23 THE COURT: I mean, maybe it's in the  
24 papers somewhere.

25 Mr. Erdman, do you know what he's talking

1 about?

2 MR. ERDMAN: I haven't reviewed that order  
3 recently. But I think the reason he went back to  
4 2010 is because --

5 THE COURT: No, no, no. Answer my  
6 question.

7 Do you know, is it a specific five remarks  
8 that are referenced?

9 MR. ERDMAN: I haven't reviewed that order  
10 recently.

11 THE COURT: I mean, she talks about,  
12 "during the course of litigation, defendant made  
13 statements accusing plaintiff of criminal activity,  
14 including theft of documents, computer hacking,  
15 extortion, and trespass."

16 Somehow, those are five remarks of --

17 MR. RODRIGUEZ: At the deposition, we asked  
18 about five of them, but they were somewhere --

19 THE COURT: Wait, wait, wait. This is a  
20 deposition of Mr. Erdman?

21 MR. RODRIGUEZ: A deposition of Mr. Erdman.

22 THE COURT: That took place after this  
23 order?

24 MR. RODRIGUEZ: That's correct.

25 THE COURT: Oh. I thought you told me that

1 Judge Schofield referred to five remarks.

2 MR. RODRIGUEZ: Excuse me. Judge Schofield  
3 referred -- again, in the opinion order she gave,  
4 the only remarks that survived our motion to  
5 dismiss -- she dismissed some of his claims, or some  
6 of them. And the only ones that remained, that  
7 survived the dismissal of the complaint, were the  
8 ones in which, allegedly, my client referred to him  
9 as having committed a felony or referred to him as a  
10 felon.

11 THE COURT: So what is Judge Schofield  
12 talking about when she says, "Defendant made  
13 statements accusing plaintiff of criminal activity,  
14 including theft of documents" --

15 MR. RODRIGUEZ: That's the one.

16 THE COURT: -- "computer hacking, extortion  
17 and trespass"?

18 She's not talking about felony. She's  
19 talking about something much more specific.

20 MR. RODRIGUEZ: Maybe much more specific, a  
21 better wording would be having accused him of a  
22 crime.

23 THE COURT: So why is that five remarks?

24 MR. RODRIGUEZ: Well, no, it's not. We  
25 asked about five remarks in our post-EBT.

1           THE COURT: Okay. Well, don't represent to  
2 me that Judge Schofield made some decision about  
3 five remarks. You're making an inference that  
4 that's what's left in this case.

5           MR. RODRIGUEZ: I apologize, Your Honor.  
6 That was incorrect.

7           THE COURT: Yeah. Okay.

8           So, Mr. Erdman, again, I haven't read the  
9 papers underlying the motion to dismiss, which I  
10 guess amounts to the complaint, but is there some  
11 agreement as it were on what specific remarks are at  
12 issue in the case?

13          MR. ERDMAN: With the Court or between the  
14 parties?

15          THE COURT: Well, what's your view?

16          MR. ERDMAN: My view is he spent -- from  
17 around 2013 onwards, he had conducted several  
18 forensic analysis of various computers and devices.  
19 He then used those reports to go to law enforcement,  
20 and he did so for years, trying to reach out to  
21 anyone he could think of.

22          THE COURT: Okay. I think what I need you  
23 to do is point to the allegations in the complaint  
24 that you believe survive and about which you are  
25 suing in this lawsuit.

1 Do you have a copy of the amended  
2 complaint, by any chance?

3 MR. ERDMAN: I do not have it with me.  
4 Sorry about that.

5 THE COURT: I have one. I mean, I have it  
6 here. That's your advantage. I think we're going  
7 to have to do this now, otherwise we're never going  
8 to get anywhere.

9 Is our printer up and running?

10 THE DEPUTY CLERK: It is.

11 MR. POLIZZOTTO: Your Honor, if I may add  
12 one more thing?

13 THE COURT: Go ahead.

14 MR. POLIZZOTTO: Your earlier question was  
15 regarding the dates for production. The complaint  
16 that's the subject of this action was filed  
17 originally in 2020. And since the statute of  
18 limitations is a one-year statute for libel, that's  
19 why the position is that anything prior to 2019, any  
20 statement that was made by the defendant prior to  
21 2019 would be time-barred.

22 THE COURT: Right. But the issue is not  
23 merely a statement. It's also for defendants' state  
24 of mind, which might be informed by documents before  
25 or after that, right?

1 MR. POLIZZOTTO: Ostensibly, state of mind  
2 is certainly going to be relevant to the statements  
3 made within the relevant statute-of-limitations  
4 period; however, I think that the discovery requests  
5 that are being made are going way beyond trying to  
6 establish his state of mind.

7 THE COURT: Well, that doesn't mean you  
8 just get to stop searching because you think some go  
9 beyond. I mean, obviously, some are within.

10 MR. ERDMAN: I mean, also, too, they didn't  
11 object to any of the requests because they had said  
12 they were giving me everything. They never --

13 THE COURT: I do recall that.

14 Yeah, I think I went through all this. You  
15 guys had done -- had so messed this up that I said  
16 you're going to have to do everything. I don't  
17 remember the specific discussion about the earlier  
18 date, but I ordered up until July 26, 2022. That's  
19 it. That's the order of the Court.

20 How do you just ignore that and say -- I  
21 mean, I guess you had some fantasy that I had made  
22 some early cutoff date of 2019. But, I mean, we  
23 have to scour the record to talk about when the  
24 early cutoff date was.

25 MR. ERDMAN: I have the records that

1       they're pointing to for that.

2               THE COURT:   No, no.   When does it start is  
3       the question.

4               MR. ERDMAN:   Oh.   Mr. Rodriguez started  
5       mentioning it after our last conference.

6               THE COURT:   All right.   My computer froze.

7               THE DEPUTY CLERK:   Okay.

8               THE COURT:   So can you call up the Erdman  
9       case file.

10              THE DEPUTY CLERK:   Oh, I already have it  
11       up.

12              THE COURT:   And you see number 68, Second  
13       Amended Complaint, it's one of the more recent  
14       documents.

15              THE DEPUTY CLERK:   You said, "68"?

16              THE COURT:   It's a document in the case  
17       file.

18              THE DEPUTY CLERK:   Oh, case file.

19              THE COURT:   I mean, you can get it off the  
20       docket sheet, too.   It doesn't matter.

21              MR. RODRIGUEZ:   May I add something in the  
22       meantime, Your Honor?

23              THE COURT:   No.

24              Do you have it?

25              THE DEPUTY CLERK:   Yeah.   Second.   Yep, I

1 see it.

2 THE COURT: Okay. See if you could print  
3 it.

4 THE DEPUTY CLERK: Okay.

5 THE COURT: Go ahead.

6 MR. RODRIGUEZ: Subsequent to that date,  
7 we've produced everything we've had, so  
8 defendants --

9 THE COURT: Don't. Stop. Stop. Stop.

10 Don't just tell me you've produced  
11 everything you had because, honestly, I'd put you  
12 under oath right now, and if I turned out to be  
13 wrong, I would refer you. So don't just say things,  
14 I produced everything I have.

15 We're going through a process here to  
16 figure out whether you, in fact, conducted this  
17 properly, not whether, in your mind, you think you  
18 produced everything you had.

19 MR. RODRIGUEZ: It was better when I  
20 just --

21 THE COURT: All right. Now, hold on.  
22 Stop.

23 We're on the topic of whether I ever  
24 addressed what the start date of this production  
25 was.

1           So, Mr. Erdman, you have anything on that?

2           I mean, I'll address it right now if I have  
3 to, but ...

4           MR. ERDMAN: I don't think we ever  
5 addressed it because I think the parties were in  
6 agreement on our document requests and the start  
7 dates there.

8           THE COURT: Right. Well, the problem is  
9 they're denying the agreement. So if you had  
10 something in writing or anything, it would be a big  
11 help. I mean, the fact that they're asking you for  
12 2010 is a little bit damning.

13           Okay. I'm going to show you the Second  
14 Amendment Complaint.

15           It stopped at 134. Did we run out of  
16 paper?

17           THE DEPUTY CLERK: Which one?

18           THE COURT: Did it run out of paper?

19           THE DEPUTY CLERK: No. I don't think so.  
20 Why wouldn't we have more paper here?

21           THE COURT: There's no --

22           THE DEPUTY CLERK: No more paper here or --

23           THE COURT: Did the machine run out of  
24 paper?

25           THE DEPUTY CLERK: Yes.

1 THE COURT: Oh, okay. Let me see how much  
2 more pages are left.

3 Oh, it's frozen. I can't tell.

4 It's missing five pages. Are there  
5 chambers on this floor?

6 THE DEPUTY CLERK: I'm not entirely sure,  
7 but I'll look.

8 THE COURT: I think that there may be. Or  
9 just see if you can --

10 THE DEPUTY CLERK: Find paper?

11 THE COURT: Borrow. Beg. Borrow.

12 In the meantime, I want you to start going  
13 through this, mark the defamatory statements. I'll  
14 let the defendants do the same thing.

15 I will be sitting here doing some other  
16 matters, if everyone can just sit tight for a bit.

17 (Pause in proceedings.)

18 THE COURT: I wonder if we shouldn't just  
19 get it from our stock. If we had done it that way,  
20 we would have it by now.

21 THE DEPUTY CLERK: Oh, Judge Ramos on the  
22 fourth floor.

23 THE COURT: You might as well bring the  
24 extra just in case.

25 THE DEPUTY CLERK: We're on the record, by

1 the way.

2 UNKNOWN SPEAKER: Do you remember when you  
3 appeared in the --

4 THE COURT: I'm sorry. We're on the  
5 record.

6 How much longer do you think, Mr. Erdman?

7 MR. ERDMAN: I think I have it. I think  
8 it's starting right at paragraph 113.

9 THE COURT: Okay. And continues?

10 MR. ERDMAN: Continues to 115, and then  
11 picks up at 118 through 124.

12 THE COURT: Okay. So there are a number of  
13 statements here. Why don't you show them. Did you  
14 mark it? I think you should hand to them the pages  
15 where the defamatory statements are.

16 I'll give you a chance to look at that.

17 MR. POLIZZOTTO: Thank you.

18 MR. ERDMAN: I also think paragraph 98 is  
19 going to be relevant for this argument as well.

20 THE COURT: Make sure you give that to  
21 the ...

22 Okay. Do you folks need more time to look  
23 at the --

24 MR. POLIZZOTTO: Just two more minutes,  
25 Your Honor.

1 THE COURT: Just let me know when you're  
2 done.

3 MR. POLIZZOTTO: Okay.

4 I've reviewed them.

5 THE COURT: All right.

6 So, right now, all we're trying to do is  
7 figure out what the subject matter of this action is  
8 by figuring out the defamatory statements and when  
9 they were made.

10 Now, the complaint does not identify when  
11 they were made, and that certainly could have been  
12 the subject of a motion. I gather it wasn't, or  
13 Judge Schofield would have ruled on it. So it's  
14 certainly legitimate to find out when they were made  
15 by conducting a deposition.

16 Is it the defendants' contention that a  
17 deposition was done that identified what statements  
18 were at issue and the dates on which the statements  
19 were made?

20 MR. RODRIGUEZ: Can I take a look at this?

21 MR. POLIZZOTTO: Yes, Your Honor. The  
22 deposition was held, and it's those documents that  
23 we were seeking in the request.

24 THE COURT: Hold on. Hold on. Hold on.

25 MR. POLIZZOTTO: Yes, Your Honor.

1 THE COURT: I don't want to talk about a  
2 document request. Try to answer my question.

3 MR. POLIZZOTTO: Okay.

4 THE COURT: The question is, did you depose  
5 the plaintiff to identify the specific statements,  
6 the universe of statements that are at issue,  
7 defamatory statements that are at issue in this  
8 case, and the dates on which they were made?

9 MR. POLIZZOTTO: Yes.

10 THE COURT: Okay. And what are the dates  
11 in which was claimed those statements were made?

12 MR. POLIZZOTTO: The dates were not  
13 specifically identified by the plaintiff as such.  
14 The plaintiff instead stated that the defamatory  
15 statements were contained in documents that were  
16 written, and demand for production of those  
17 documents was made.

18 So, as we sit here right now, I cannot tell  
19 you with any certainty because plaintiff has not  
20 identified them with such dates.

21 THE COURT: And that's -- hold on.

22 And that's going to be rectified when you  
23 get these documents?

24 MR. POLIZZOTTO: Yes, Your Honor.

25 THE COURT: Go ahead, Mr. Erdman.

1 MR. ERDMAN: I was going to ask if they  
2 have the transcription that they're summarizing.

3 THE COURT: The transcript of what?

4 MR. ERDMAN: The deposition.

5 THE COURT: Oh, with them right now?

6 Do you have it with you?

7 MR. POLIZZOTTO: I don't have it with me  
8 right now.

9 THE COURT: Why do you want the transcript?

10 MR. ERDMAN: Oh, no, I just wanted to check  
11 what they were referencing.

12 THE COURT: Okay. We cannot move forward  
13 without figuring -- I'm surprised the case got this  
14 far without the defendants making a motion on this  
15 point.

16 But in a defamation case, you need to be  
17 very specific about the statements, and you need to,  
18 I believe, give dates on which they were made. I  
19 could be wrong, but certainly that's something one  
20 should determine, not three years into a case, but  
21 immediately through an interrogatory or something  
22 else. So how we got here without knowing the answer  
23 to this most basic question is beyond me, but  
24 nothing surprises me anymore in this case. And  
25 that's where we are now.

1           So do you know now, Mr. Erdman, what dates  
2           are going to be reflected in whatever documents you  
3           produce?

4           MR. ERDMAN: For the statements themselves,  
5           I believe he started making those in 2013. And as I  
6           had mentioned in one of my applications, he produced  
7           a -- he cut off a privilege log around the statute  
8           of limitations that indicated it was ongoing to  
9           around at least 2022.

10          Sorry. I'm just trying to find that.

11          THE COURT: So I guess at the time you  
12          filed this complaint, did you have those statements  
13          from as late as the time you filed in 2020, or when  
14          you filed the amended complaint in 2021?

15          MR. ERDMAN: I believe I had some of them,  
16          but there was others I anticipated getting in  
17          discovery that I have yet to receive.

18          THE COURT: All right.

19          MR. ERDMAN: And for that privilege log I  
20          mentioned, there was a gap. This is the one from  
21          Silverseal, who was --

22          THE COURT: I have to do this in my pace,  
23          so let's just try to deal with things one piece at a  
24          time.

25          Okay. So let me throw something out here

1 in case it helps. If all we're talking about is,  
2 you know, finding statements about Erdman, that's  
3 going to be relatively easy and might be  
4 circumscribed, but only if the defendants' defense  
5 in this case is truth.

6 If he's saying that, in fact, he was  
7 lacking in malice, if he wants to say, well, even if  
8 it all is false, in fact, you know, I didn't know it  
9 was true and I didn't act with reckless disregard  
10 and all that, then we're going to have to open up  
11 discovery to before the period of the defamatory  
12 statements to figure out the defendants' attitude  
13 towards the plaintiff. And that's all going to have  
14 to be the subject of discovery.

15 If, however, the only defense is going to  
16 be truth, then we could avoid all that, but you'd  
17 have to, obviously, put that in writing, and I would  
18 issue an order of inclusion about that.

19 Do you already know the answer to that  
20 question? Do you want to consult with your client?

21 MR. POLIZZOTTO: I would like the  
22 opportunity to confer with my client, but I believe  
23 that the response will be that we would be willing  
24 to agree with Your Honor in saying that we would  
25 waive the defense with respect to malice and only

1       rely on truth.

2               THE COURT:   Okay.   Theoretically, it's not  
3       a defense.   It's an element --

4               MR. POLIZZOTTO:   I'm sorry.   I apologize.

5               THE COURT:   You have to say you will not  
6       contest his contention that there was actual malice.

7               MR. POLIZZOTTO:   I apologize and stand  
8       corrected.

9               THE COURT:   Okay.   All right.

10              So, Mr. Erdman, do you understand what I  
11       was just saying?

12              MR. ERDMAN:   Yes.

13              THE COURT:   Okay.

14              MR. ERDMAN:   If I may --

15              THE COURT:   If that's taken out of the  
16       case, do you have need for any documents prior to  
17       whatever the one-year statute of limitations period  
18       is?

19              MR. ERDMAN:   Yes, I believe I would.

20              THE COURT:   Tell me the basis.

21              MR. ERDMAN:   If you look at paragraph 98,  
22       Victor told the SEC these complaints are --

23              THE COURT:   Hold on.   Hold on.

24              Go ahead.   What are you saying about 98?

25              MR. ERDMAN:   Yeah.   Victor had told the

1 SEC, these complaints are embedded within a much  
2 larger context. And then he goes on to describe all  
3 the things he was accusing me of.

4 This was back in 2016, and he had been  
5 using these forensic examinations and making these  
6 claims going back years. It was far before the one  
7 year --

8 THE COURT: Okay. No. But there's a  
9 one-year statute of limitations for defamation.  
10 Now, you agree with that?

11 MR. ERDMAN: Yes, I agree.

12 THE COURT: Okay. So you can't sue for a  
13 defamation that occurred in 2018, right?

14 MR. ERDMAN: Oh, yes, I understand that.

15 My concern is he had done the analysis much  
16 earlier in time and was recycling it for years.

17 THE COURT: "He had done the analysis."  
18 What do you mean by that?

19 MR. ERDMAN: He had given devices to  
20 various forensic firms to try and come up with data  
21 to bolster his claims to law enforcement. And he  
22 had done that, I believe, in 2014 onwards. So  
23 that --

24 THE COURT: But what does that have to do  
25 with anything I'm talking about?

1 MR. ERDMAN: Oh. As far as the truth of  
2 Victor's statements, the evidence he was pointing to  
3 went back further than that one year.

4 THE COURT: Oh, okay. So for some  
5 statements, you're saying, I guess -- let me try to  
6 piece this together.

7 For some statements, you're saying that  
8 they relate to -- let me think about this.

9 He is saying that you did a hacking or  
10 something?

11 MR. ERDMAN: Correct?

12 THE COURT: Okay. And the hacking occurred  
13 many years previously.

14 MR. ERDMAN: Yeah. I believe he said it's  
15 either 2012 or '13.

16 THE COURT: Whatever. Whatever it is.

17 And, I guess, not for purposes of malice,  
18 but for purposes of proving the truth of falsity of  
19 the claim of your hacking, you might need some  
20 information prior to 2019.

21 MR. ERDMAN: Correct.

22 THE COURT: Okay. That, at least, I  
23 understand. I assume you don't need it for any  
24 other type of allegation. I mean, I can't remember  
25 what he was saying about you.

1 I think we need to have more comprehensive  
2 listing of these, of what's at issue in this case  
3 and the dates they were made. I think you need to  
4 put that in writing, Mr. Erdman.

5 Basically, it's a contention interrogatory,  
6 or maybe -- it's really a bill of particulars, is  
7 what it is. We need to know what the defamatory  
8 statements are that Victor made and what dates they  
9 were made. And they need to, you know, come within  
10 this complaint that exists now.

11 MR. ERDMAN: In the alternative, if the  
12 defendant would agree, I could also amend the  
13 complaint to take into consideration  
14 Judge Schofield's order and firefly this because  
15 it --

16 THE COURT: If they agree, that's fine, but  
17 I'm not going to allow any motions to amend the  
18 complaint at the stage of the case. It's way too  
19 late for that.

20 But we do need to figure out the dates of  
21 these statements and what exactly they are. Again,  
22 I'm flabbergasted this hasn't happened by now in  
23 this case. I assumed that everyone was simply on  
24 board. I mean, I had no reason to look at the  
25 complaint in this kind of detail.

1                   How soon can you put that together?

2                   MR. ERDMAN: I think I can do that within  
3 two weeks.

4                   THE COURT: Maybe one week.

5                   MR. ERDMAN: I can try. Yeah.

6                   THE COURT: This shouldn't be very hard. I  
7 mean, in a way, you're a little bit limited by what  
8 you said. And I don't know what you said in the  
9 deposition, but you shouldn't start adding things  
10 that you already identified in the deposition.  
11 We've got to cabin this case. All right.

12                   Now, we're still back on the issue of the  
13 time period. So I guess your contention,  
14 Mr. Erdman, is, in order for you to prove the  
15 falsity of the statements that Victor made, you're  
16 going to need his documents?

17                   MR. ERDMAN: So he had various devices sent  
18 to these forensic firms, and there's no evidence  
19 that they've ever searched or produced anything  
20 from --

21                   THE COURT: Hold on. Hold on. Hold on.

22                   Again, I'm trying to focus on the  
23 defamatory statements. Are you bringing up these  
24 devices because they were being tested to see  
25 whether you hacked them, which is one of the

1       defamatory statements?

2               MR. ERDMAN:   Correct.   He --

3               THE COURT:   That's why you're bringing it  
4       up.

5               MR. ERDMAN:   Yes.   He had reports made from  
6       those analysis, and then he would be forwarding  
7       those to law enforcement and pointing to them --

8               THE COURT:   Well, I mean, if we're going to  
9       preclude him -- if he's precluded from using -- I  
10      mean, you can take your gamble on this, but if  
11      there's an order of preclusion about using documents  
12      from before, that he doesn't have to produce  
13      documents from before, you know, 2019, whatever the  
14      date is, one year before the filing of the  
15      complaint, then he's not going to be able to use any  
16      of those documents to show you did any of these  
17      things.

18              So if people want to just wash their hands  
19      of all that and go into this afresh with only  
20      post-2019 documents, what's sauce for the goose is  
21      sauce for the gander.   So not only will you not get  
22      them the discovery, they're going to be precluded  
23      from using any documents from that period too.

24              Now, again, they haven't agreed to this yet  
25      anyway, but that's the way it would go.   So it seems

1 to me it might help you that they're not going to be  
2 using documents before 2019. Is that possible?

3 MR. ERDMAN: Potentially. But I would  
4 prefer to have the data the forensics people were  
5 working off of so I can just put all these claims to  
6 bed and prove them to be false.

7 THE COURT: All right. Well, we could do  
8 it with some limited exceptions that would then  
9 allow them to use these documents as well.

10 MR. ERDMAN: And, I mean, I'm not asking  
11 them to search everything back all that time. They  
12 have specific hard drives and devices they gave to  
13 these vendors they claim to have produced from, and  
14 there's no evidence that ever happened.

15 THE COURT: Okay. Well, now, we're getting  
16 into the larger picture, which I haven't even gotten  
17 there. You asked me to try to deal with the  
18 time-period thing, which I'm trying to deal with.

19 If there's no agreement specifically, then  
20 you are going to be entitled to go before 2019,  
21 certainly, in order to figure out the malice issue  
22 and perhaps with respect to, for example, this  
23 hacking allegation. In order to get evidence, you  
24 need to show falseness. But, you know, it all  
25 depends upon what you end up agreeing and what the

1 actual claims are and what the search terms have  
2 been and so forth.

3 So I think step one is you putting together  
4 this list. I'm trying to think how to phrase this.

5 It's either you're responding to a  
6 contention interrogatory or it's a bill of  
7 particulars. Let me see what the rule on bill of  
8 particulars says.

9 Motion for more definite statement. That's  
10 what we call it in federal court.

11 Yeah, I'm ordering a more definite  
12 statement under 12(e), okay.

13 So I want a more definite statement of the  
14 specific defamatory statements, with quotations if  
15 possible, and the dates. Now, I'm not going to  
16 preclude you from relying on what's come up already  
17 in discovery. And it's possible that, if other  
18 items come up, you might be allowed to include them.  
19 We're not going to deal with that now. But based  
20 upon what you know now, all right.

21 So I'd like you to get that together in a  
22 week. And if there's some problem with that, the  
23 defendant should write me a letter saying why, for  
24 whatever reason, those statements are not within the  
25 scope of the complaint or Judge Schofield's order.

1 And then once we have dates and so forth for that,  
2 maybe we can move forward.

3 Are you going to be able to do this? I  
4 mean, do you have statements and the dates? Are you  
5 relying on discovery for this?

6 MR. ERDMAN: Partially relying on  
7 discovery, but I think I can put some stuff  
8 together.

9 THE COURT: Yeah, but is it a complete  
10 list?

11 MR. ERDMAN: I don't think I could get the  
12 whole complete list.

13 THE COURT: So what's missing?

14 MR. ERDMAN: From what I can tell is they  
15 basically didn't search anything after --

16 THE COURT: You need to know what he said  
17 to others from his discovery.

18 MR. ERDMAN: Correct.

19 From what I can tell is Victor's e-mail  
20 accounts were never searched after 2019, any of  
21 them. You know, like, I have a huge gap from what  
22 they're claiming is the limitations period. They  
23 reversed it and only produced outside of that.

24 THE COURT: Well, maybe we do need to solve  
25 the discovery problem because to the extent you're

1     relying on discovery for this, which I think you are  
2     entitled to, we really can't make any progress.

3             I guess it would help to know the earliest  
4     dates, but you might get that from discovery too.  
5     You still may not have gotten what you need from  
6     discovery, right?

7             MR. ERDMAN: Yeah. Correct.

8             THE COURT: All right. Maybe this pathway  
9     is not going to solve our problems.

10            MR. ERDMAN: And, I mean, I also had tried  
11     to bring up this date-range issue in the joint --

12            THE COURT: The what?

13            MR. ERDMAN: I had tried to raise this  
14     date-range issue that we're working --

15            THE COURT: What issue?

16            MR. ERDMAN: As far as what the relevant  
17     time period is in the joint letter.

18            THE COURT: Oh, date range.

19            MR. ERDMAN: Yes.

20            THE COURT: Okay. I couldn't understand  
21     you.

22            MR. ERDMAN: And they deleted it from my  
23     joint letter when they submitted it to the Court.

24            THE COURT: Well, I mean, you sent me about  
25     that.

1 MR. ERDMAN: Yeah.

2 THE COURT: I mean, I don't blame them. I  
3 had a specific request, but we certainly have to  
4 deal with the date problem. All right.

5 I don't think we should hold up our  
6 discovery problem in order for you to do this more  
7 definite statement. I don't think it would hurt to  
8 at least know what we're dealing with right now that  
9 you know about. So go ahead and do it, but I will  
10 certainly understand if you have a sentence that you  
11 reserve to add to it based on the discovery.

12 So that's not going to take us terribly  
13 far. So let's go back to where we were. I think I  
14 have to deal with the start date. I still have to  
15 deal with the start date of this. I mean, 2010  
16 seems ridiculously long, given that the actual  
17 statements are going to have to be from 2019 and  
18 later.

19 When is the alleged hacking? When is that  
20 alleged to have occurred?

21 MR. ERDMAN: I believe it was in 2013.

22 THE COURT: I see. Now, with respect to  
23 the hacking, then we might have a thing, you know,  
24 an issue of, you need to go back to 2013, I guess.  
25 Or do you see anything before that, though?

1 MR. ERDMAN: Yeah, I don't think there's  
2 much need for before then, personally.

3 THE COURT: Okay.

4 MR. ERDMAN: The disagreement between me  
5 and Victor happened around that timeframe. The  
6 stuff prior, I don't think is necessary for this.

7 THE COURT: All right. So let me hear from  
8 defendants on this.

9 Barring any agreement about actual malice  
10 and some exceptions for, like, this hacking thing,  
11 why shouldn't it be 2013?

12 MR. POLIZZOTTO: I mean, we raised the  
13 arguments earlier. I think that this is going to be  
14 resolved with an agreement; however, should, for  
15 some reason, there not be an agreement for his state  
16 of mind, it's really the only -- and I guess, as  
17 Your Honor indicated, with respect to the issue on  
18 him obtaining information on the truth as to certain  
19 items, if limited to those, if it's with respect to  
20 these two issues, then 2013 seems appropriate for  
21 the hacking, if that's the allegation. But that may  
22 not be the same date that's appropriate for other  
23 issues that he maybe raised in -- (audio  
24 distortion).

25 THE COURT: What else were you accused of

1 doing?

2 MR. ERDMAN: Like, breaking in the  
3 apartment, tracking him through his phone, taking  
4 files that he claimed were worth many millions of  
5 dollars. And there was a couple more, extortion,  
6 perjury.

7 THE COURT: Okay. You don't need his  
8 documents to show that none of that happened, right?

9 MR. ERDMAN: I believe there will be some  
10 e-mails where he's trying to sell this idea to  
11 various law enforcement that may go back a while.

12 THE COURT: But you can't sue on those,  
13 so -- right?

14 MR. ERDMAN: Yeah.

15 My main concern is the data that he's using  
16 to make these accusations.

17 THE COURT: But if he's precluded -- it  
18 seems to me if you can make an agreement that he  
19 can't use any of this stuff, any of those documents,  
20 you can testify that you never extorted anybody,  
21 never did this, you never did that, and he'll have  
22 nothing from that time period to contravene that  
23 because he'll be precluded from using any documents  
24 from that period.

25 MR. ERDMAN: Oh, well, there's also another

1 set of hard drives that I believe he did an analysis  
2 of in 2018.

3 THE COURT: He did analysis of for what  
4 purpose?

5 MR. ERDMAN: The same thing, to make  
6 accusations against me for stealing or perjury and  
7 all of those kind of things.

8 THE COURT: Okay. We can't assume any  
9 agreements at this point, so --

10 MR. POLIZZOTTO: Your Honor?

11 THE COURT: Yes.

12 MR. POLIZZOTTO: I guess you've indicated a  
13 week for plaintiff to provide a more definite  
14 statement. If we're given the same time to consult  
15 with our client, the defendant, I'm fairly confident  
16 we're going to be able to get to the point that  
17 Your Honor has indicated where there would be this  
18 preclusion on both sides. And I think that would  
19 address most, if not all, of these discovery issues.

20 THE COURT: All right. Well, I'm not as  
21 sanguine as you are. I'm certainly happy to let you  
22 try it.

23 I think the next step, Mr. Erdman, is for  
24 you to do these depositions I'm talking about.

25 MR. ERDMAN: So I had already deposed

1 Victor, and we also had the vendor conference. And  
2 I've also asked counsel to provide answers to  
3 questions about discovery. And he basically always  
4 will blame a former attorney or another vendor  
5 because, from what I can tell, they did pretty much  
6 nothing for this production. Victor described them  
7 as being basically a repository of what was done in  
8 the past.

9 THE COURT: Well, if you feel you have  
10 evidence that they have not done a proper search, I  
11 think you can marshal that. I mean, if you don't  
12 need the depositions, then you don't have to take  
13 them.

14 MR. ERDMAN: I'm very confident they didn't  
15 do a search, based on what they gave me.

16 THE COURT: The issue is not confidence.  
17 The issue is whether, when presented to me, am I  
18 going to make a finding that they didn't do a proper  
19 search?

20 MR. ERDMAN: So they had given me a tracker  
21 of the repositories they claimed to have produced  
22 from, and supposedly that's everything, despite them  
23 claiming there are other things that were produced  
24 from that aren't on this tracker, and they have  
25 absolutely no basis for claiming they are.

1 THE COURT: I have no idea what you just  
2 said. Try it again.

3 MR. ERDMAN: So there's a tracker, which is  
4 238-1.

5 THE COURT: It's that single page.

6 MR. ERDMAN: Correct.

7 I went through all of these repositories  
8 and compared them to the production to figure out  
9 what was what.

10 The first three items in 2019 were my  
11 production, Ms. Kashkevich (phonetic) and  
12 Ms. Toktesanova's (phonetic). We had made  
13 productions in the state action, and he did a  
14 privilege review of it and then produced it back to  
15 me. That was 80 percent of his initial production.

16 THE COURT: Let's see. This is not the way  
17 I like to think about it. The way I like to think  
18 about it is not examining his production. The way I  
19 want to think about it is, what are the sources he  
20 should have looked at? What did he do to do a  
21 search of those sources? And then what was  
22 produced?

23 That's the way I want to look at it. So  
24 the fact that he gave to you something you gave to  
25 him, you know, it seems stupid, but I don't care

1 about that.

2 MR. ERDMAN: Sure.

3 THE COURT: Because you're not saying  
4 that's something that you were seeking to have him  
5 search for.

6 MR. ERDMAN: Understood.

7 THE COURT: You know, so that's the way we  
8 need to think about this.

9 MR. ERDMAN: Well, so it seems like there  
10 was this Braverman action where they found 900,000  
11 documents. Of those, Schlam Stone & Dolan had taken  
12 around 37,000 to move into the database for  
13 production.

14 THE COURT: Is the Braverman action  
15 documents that were produced to him?

16 MR. ERDMAN: No, it was his own documents.  
17 They did a collection of his devices and put it into  
18 that database. And then they've been claiming they  
19 produced everything to me, but they had taken out  
20 just a small fraction of what they had collected.

21 THE COURT: They've "taken out", meaning  
22 given to you?

23 MR. ERDMAN: So they took -- there was a  
24 separate database with 900,000 documents that were  
25 collected from Victor. I think his e-mail accounts

1 and computers. No one can actually tell me what  
2 made it up.

3 Schlam Stone & Dolan, for another action,  
4 did some sort of search, exported the documents from  
5 that database into the current database they're  
6 using for production. And from what I can tell, the  
7 search terms were made for another case because this  
8 one wasn't even filed at the time. So the grand  
9 total of documents they could be producing is only  
10 37,000 out of 900,000.

11 THE COURT: I'm not sure I'm following.

12 So they took a set of documents that had  
13 been gathered by Schlam Stone.

14 MR. ERDMAN: This Braverman firm had  
15 collected 900,000 documents.

16 THE COURT: The Braverman firm. Okay.

17 MR. ERDMAN: Correct. This is for an  
18 action against the former attorney.

19 They had told the court they were in the  
20 unenviable position of essentially starting over  
21 because they couldn't make --

22 THE COURT: Who is "they"?

23 MR. ERDMAN: Victor and the Braverman  
24 attorneys representing him.

25 THE COURT: Go ahead.

1 MR. ERDMAN: So they found that the prior  
2 productions. They had no idea what was done, what  
3 was produced. So they had to start from scratch and  
4 gather all this data from his computers, e-mails and  
5 whatever else they searched.

6 No one can actually tell me what happened  
7 there. But from whatever they gathered from those  
8 900,000 documents, their vendor had run search terms  
9 and narrowed the 900,000 to around 37,000. That  
10 37,000 was then taken and put into the database for  
11 review in this action.

12 THE COURT: Okay. So what is your point on  
13 that one?

14 MR. ERDMAN: That there is, you know, 800  
15 and something thousand documents that were never  
16 searched or they've done anything with. They don't  
17 know what was collected. They don't know what was  
18 moved over.

19 THE COURT: So you feel that that 900,000  
20 encompasses sources that are worth looking at?

21 MR. ERDMAN: Yes.

22 And as an example, like, their privilege  
23 log cuts off in around 2019. They were supposed to  
24 describe why that happened and they never did.

25 THE COURT: Where is this dataset of

1 900,000 documents?

2 MR. ERDMAN: That, I don't know. I believe  
3 the vendor, TransPerfect, has it in some form  
4 separate from what they're producing.

5 THE COURT: Does the defendant still have  
6 whatever these sources are?

7 Do you know the answer to that question?  
8 It's for defense counsel.

9 MR. RODRIGUEZ: From what we understand,  
10 the vendor has them. They were collected.

11 THE COURT: Victor does. Usually people  
12 don't take originals, they take copies.

13 MR. RODRIGUEZ: And according to our  
14 vendor, the gentleman that we've dealt with --

15 THE COURT: No. Does Victor still have  
16 whatever the originals, whatever this thing it was  
17 taken from is?

18 MR. RODRIGUEZ: My client should. A lot of  
19 the -- from what I understand from my client, these  
20 were documents. He should have the originals, but I  
21 would need to ask him because there was so much that  
22 was going on before we took over documents.

23 So there's one firm that's holding on to  
24 documents as part of a charging lien. There's  
25 another -- so it's uncertain whether he has the

1 originals or not. We think that he does.

2 THE COURT: Well, how are we three years in  
3 this case and you don't know where the documents  
4 are, what the sources are?

5 MR. RODRIGUEZ: Well, we know where the  
6 documents are with the vendor.

7 THE COURT: Well, you need to know where  
8 all these documents are and you need to run searches  
9 on them. Why is this complicated?

10 MR. RODRIGUEZ: We did, Your Honor.

11 THE COURT: You personally ran a search  
12 with chosen search terms?

13 MR. RODRIGUEZ: Mr. Victor ran the search  
14 terms under the order that came down in 2022 of the  
15 sources that he had, his phone. He had his e-mail  
16 accounts.

17 THE COURT: That's the 900,000 documents  
18 that the --

19 MR. RODRIGUEZ: No, those aren't the  
20 900,000 documents.

21 THE COURT: That's what I'm asking about.

22 MR. RODRIGUEZ: The vendor, TransPerfect,  
23 ran the search terms on those documents.

24 THE COURT: What's the source of those  
25 documents?

1 MR. RODRIGUEZ: Source of the documents are  
2 various drives that were -- various drives of  
3 documents that were collected over the years by  
4 Schlam Stone, by Braverman, by his previous law  
5 firms.

6 THE COURT: And do you have access to that  
7 set, the 900,000?

8 MR. RODRIGUEZ: We believe, yes, we have  
9 access to that set.

10 THE COURT: So you need to run the search  
11 on that set.

12 MR. RODRIGUEZ: And according to our  
13 vendor, we did.

14 THE COURT: On search terms you guys agreed  
15 to?

16 MR. ERDMAN: So they never searched the  
17 900,000. From my talk with the vendor, the 37,000  
18 were exported from the main repository of what  
19 they've collected. They moved it over, and then  
20 they only --

21 THE COURT: And how did they choose those  
22 37,000?

23 MR. ERDMAN: That was Schlam Stone, and no  
24 one's been able to tell me how they did it.

25 THE COURT: You have to run search term on

1 the original documents. Do you understand that?

2 MR. RODRIGUEZ: Yeah. Vendor did,  
3 Your Honor. He's making --

4 THE COURT: You don't even know what the  
5 search terms are, though. I just asked you, do you  
6 know what the search terms are.

7 MR. RODRIGUEZ: I do not have them in front  
8 of me, Your Honor, but our vendor does.

9 THE COURT: And have you shared them with  
10 the plaintiff so that he can see that the 900 were  
11 searched properly for purposes of this case?

12 MR. RODRIGUEZ: I don't think we shared  
13 them.

14 THE COURT: Well, how could you not have  
15 done that? I don't understand.

16 I told you to share everything with him so  
17 that he knows exactly what was done to produce the  
18 documents that you're producing.

19 How could you not have done that?

20 MR. RODRIGUEZ: He never asked for them,  
21 Your Honor.

22 MR. ERDMAN: I did.

23 THE COURT: I issued an order telling you  
24 to say absolutely every single thing that was done  
25 to do the production in this case.

1 I don't know. Maybe I need to do that one  
2 more time. And this time, if you omit something and  
3 it's material, there will be personal consequences  
4 to you. I imagine a 50-page document that both of  
5 you sign under oath saying exactly what was done to  
6 search all of these things, what search terms were  
7 used, when it was done, who had custody, and where  
8 it all came from.

9 It will probably be 50 pages because when  
10 I've asked you to do this in the past you've  
11 produced these absurdly short affidavits without any  
12 detail, and I don't know what else to do.

13 I mean, maybe sanctions are the thing I  
14 should do now. I mean, it's sanctionable to not  
15 even just know these things and to not have shared  
16 it with the plaintiff when I specifically issued  
17 orders requiring you to describe in detail all of  
18 the search efforts that have been made in this case.

19 Should I move to sanctions now, or do you  
20 want one last chance to do this? You tell me. If  
21 you want to stand on your prior affidavits and have  
22 me rule about whether those were sufficient, I'll do  
23 it.

24 MR. POLIZZOTTO: No, Your Honor. I would  
25 certainly like an opportunity to --

1           THE COURT: I mean, you need to find out  
2       what's going on here, and quickly. You need to know  
3       the search terms. You need to know the databases.  
4       You need to know the dates. You need to know  
5       everything that was done. And if you can't find the  
6       answer, then the result will be you're going to have  
7       to do it yourself again. So to say you don't know,  
8       that means I'm going to require a new search.

9           The burden is on you to show you did a  
10      reasonable search. Right now, you haven't met that  
11      burden. You need to lay this out. You need to show  
12      that all of the sources that were appropriately  
13      searched in this case, things in Victor's control,  
14      they were gathered and they were searched with the  
15      appropriate search terms and an appropriate date  
16      range, consistent with my orders in this case, which  
17      required you to search through 2022, July 2022.

18          By the way, you were stuck with that date  
19      because of your failures in the past. I probably  
20      wouldn't have ordered that if there hadn't been so  
21      much recalcitrance on the defendants' part.

22          My only goal here -- believe me, if this  
23      was in the hands of any other group of lawyers, we  
24      would not be here. I never have this problem. This  
25      case is unique. It's unique in the recalcitrance of

1 the attorneys to get the information needed to  
2 determine whether a reasonable search was conducted.

3 I'll give you one last shot. After this, I  
4 think I'm just going to look at those past  
5 affidavits and whatever you gave me here, and if  
6 it's not sufficient, just start issuing sanctions  
7 that go to the merits of the case. Because if you  
8 can't produce documents -- they're the most basic  
9 things -- then, you know, I can't expect the  
10 plaintiff to proceed with that handicap.

11 MR. POLIZZOTTO: Your Honor, in addition to  
12 what you're indicating now, are we still going to be  
13 proceeding with the more definite statement and --

14 THE COURT: Yeah, I want to. I mean, it  
15 would help to know at least what's going on with  
16 what he knows.

17 MR. POLIZZOTTO: And that's to the Court  
18 with respect to the malice issue?

19 THE COURT: You folks are welcome to  
20 bargain anything you want. You don't get back to me  
21 on that. If you work something out with the  
22 plaintiff, you let me know jointly, if both of you  
23 have approved the text of. In fact, it needs to be  
24 a stipulation signed by both of you. So there's no  
25 point in reporting to me. You can just file a

1 stipulation.

2 All right. So the burden is on you to show  
3 Victor did a reasonable search on all the documents  
4 for the time period that we spoke about, which is up  
5 to July 26, 2022. I don't know what your start date  
6 was for any of these, but you'll say in your  
7 affidavit -- this is going to be sworn, by the  
8 way -- whatever search was conducted. You'll give  
9 the search terms, and you'll give the dates that  
10 were run. You'll explain what all the sources were.  
11 You'll explain how you know that those are the  
12 complete set of sources or whether or not you know  
13 they're the complete set of sources. If the  
14 affidavit shows that it's an incomplete search, then  
15 you'll have to live with that, but whatever it is,  
16 it's what it is.

17 Again, I've done this before. The  
18 affidavits were completely lacking any detail. It  
19 did not meet your burden of showing you conducted a  
20 reasonable search. So that's the way we need to  
21 think of this. This is your last chance to show  
22 you've conducted a reasonable search. And if it  
23 doesn't have the detail to show it, if it's  
24 conclusory, I'll find you didn't conduct a  
25 reasonable search, and then the question is what I'm

1 going to order.

2 I think at this point, it may be too late  
3 to do other searches, but I don't know. If you have  
4 any proposals you can have a letter that accompanies  
5 your affidavit that says, you know, we recognize  
6 that we still need to do A, B and C, and here's our  
7 proposal and how long it will take. You can try  
8 that.

9 You have two weeks for that. May 1st.

10 Anyway, serve that on -- you should file  
11 that with the Court and, obviously, the plaintiff  
12 will get it.

13 And then once you get that, Mr. Erdman,  
14 come up with whatever plan you have for what you  
15 think should happen next.

16 MR. ERDMAN: Okay. I mean, just to give  
17 you an idea of what I've been dealing with to try  
18 and get them to tell me about their keywords, they  
19 say in one of --

20 THE COURT: What I call "search terms."

21 MR. ERDMAN: Yes, "search terms."

22 They claim they've even listed the search  
23 terms utilized during that process, terms that were  
24 generated to produce documents responsive to  
25 plaintiff's document requests. They sent me those,

1 and it was my first name and last name, as well as  
2 Kashkevich, Toktesanova, (phonetic) and the last  
3 name of my former attorney. That was it. And then  
4 they previously put in an affidavit --

5 THE COURT: Okay. And you think those are  
6 not sufficient?

7 MR. ERDMAN: It's not even what they were  
8 using to do the review because there's an affidavit  
9 that says -- it describes our efforts expended  
10 during the document review involved identification  
11 of what to include in the coding panel. He goes on  
12 to say, "Plaintiff listed 39 requests in his  
13 discovery requests of defendants. Finalizing a  
14 coding panel that would satisfy that many requests  
15 took days in and of itself."

16 THE COURT: I have no idea what you just  
17 said. Give me the gist.

18 MR. ERDMAN: They had provided keywords for  
19 some contract attorneys to do this review, and they  
20 have been unable to tell me who those people were or  
21 any of the terms they used. Instead, they just told  
22 me they searched for my last name, basically.

23 THE COURT: Well, maybe that's the only  
24 term they used. I don't understand.

25 MR. ERDMAN: They've also said that this

1 coding panel the attorneys used --

2 THE COURT: I don't know what "coding  
3 panel" means.

4 MR. ERDMAN: The search terms the vendor  
5 was using was more expansive than this, and they  
6 can't tell me what that means, what would have been  
7 included.

8 THE COURT: Okay. Well, I mean, again, we  
9 need to see what -- well, what is your point right  
10 now? And, therefore, what?

11 MR. ERDMAN: I can't get any honest answers  
12 out of them. And whenever I press on a topic, the  
13 story changes, and --

14 THE COURT: Okay. Well, let's not worry  
15 about the past right now. I mean, if there's  
16 something you want to make sure is included in the  
17 affidavit, tell me now, I'm happy to talk about it.

18 MR. ERDMAN: I would like a list of search  
19 terms.

20 THE COURT: Well, I certainly made that  
21 clear.

22 MR. ERDMAN: And --

23 THE COURT: There's no way to describe how  
24 you did a reasonable search without giving search  
25 terms and the sources and the time period. So

1 that's impossible to describe without giving all  
2 those things. So if they fail to do it, I would  
3 find it was an unreasonable search.

4 MR. ERDMAN: They had also provided a list  
5 of all the repositories they supposedly searched,  
6 and they've been unable to identify any of those  
7 specifically. Like, it will just say "hard drive"  
8 with no identification beyond that. So I'd like  
9 them to be more specific.

10 THE COURT: Certainly, you have to be  
11 specific as to what the sources are. And, again, if  
12 you have no way of knowing because the original  
13 source has disappeared, then you have to say that.  
14 Certainly, you have to consult with Mr. Victor to  
15 put this affidavit together.

16 MR. ERDMAN: Such as I asked about some of  
17 the repositories they listed. They asked  
18 Mr. Victor, and he said Braverman would ultimately  
19 know more if he just followed their instructions.  
20 And I've gotten that response time and time again.

21 THE COURT: Well, again, this is the moment  
22 of proof. You cannot prove a reasonable search by  
23 saying some other firm did something. I have no  
24 idea what they did. That would not be reasonable.  
25 You would have to redo the search if that's all you

1 knew.

2 So whatever they say about that, if they  
3 say, we don't know, that is going to make it quite  
4 clear that there's not been a reasonable search.  
5 You can only do a reasonable search if you know what  
6 was done.

7 So they're going to supply this by May 1st,  
8 and then you need to talk to them and then come back  
9 to me and tell me what we need to do. I'm having  
10 déjà vu. I feel like I ordered this exact same  
11 thing a year ago.

12 But at this point, this is going to be --  
13 you know, if it's not original search, then I'll  
14 decide whether we do sanctions or we do new  
15 searches. I don't know what I'll do at that point.

16 Any questions, Mr. Erdman, or issues that  
17 we need to deal with today?

18 MR. ERDMAN: Just one thing.

19 I was promised he was conducting a  
20 privilege review of certain documents. At the last  
21 conference, we dealt with an issue where log entries  
22 weren't justified or were marked as privileged just  
23 because they were attached to a privileged e-mail.  
24 I provided a list of e-mails with those problems, I  
25 believe, about a month ago. I was promised to get

1 something regarding that yesterday. They sent me  
2 nothing, and then just told me today that it's all  
3 outside the timeframe, so they're not giving me any  
4 of it.

5 THE COURT: I think I can't deal with that  
6 now, Mr. Erdman. We have bigger fish to fry. I  
7 mean, we know something about the time period here,  
8 which is that, at least, from 2019 to 2022 is at  
9 issue, but how much before 2019, I don't know.

10 MR. ERDMAN: And I was basing that just off  
11 their priv log going back that far because they had  
12 already chosen to search that --

13 THE COURT: Yeah. No, I'm not blaming you.  
14 Anything else from your end, Mr. Erdman?

15 MR. ERDMAN: No. I think this will be fine  
16 to get us moving.

17 THE COURT: Any questions or anything else  
18 we should do today from the defense side?

19 MR. POLIZZOTTO: No. Thank you,  
20 Your Honor.

21 MR. RODRIGUEZ: No, Your Honor.

22 THE COURT: All right. Thank you,  
23 everyone.

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C E R T I F I C A T E

I, Adrienne M. Mignano, certify that the foregoing transcript of proceedings in the case of Erdman v. Victor, et al.; Docket Number: 20CV4162 was prepared using digital transcription software and is a true and accurate record of the proceedings.

Signature Adrienne M. Mignano  
ADRIENNE M. MIGNANO, RPR

Date: April 19, 2024